IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3419 OF 1995

Gannon Dunkerley & Co. Ltd.)
Chartered Bank Building, 2nd)
Floor, M. G. Road, Bombay -)
400 023. ... ...).. Petitioner.

Versus

1) The Industrial Court,)
Maharashtra,)
Arun Chambers, Tardeo,)
Bombay.)
2) Indian Labour Organisation)
5, Gope Niwas, 275, Sion)
Matunga Road, Sion, Bombay)
400 022.. .. ..).. Respondents.

Mr. C.J.Sawant with Mr. R.V.Paranjpe
for the Petitioner.

Mr. V.A.Pai for Respondent No.2.

CORAM : R.M.S.KHANDEPARKAR, J.

DATED : 28TH SEPTEMBER, 2004.

JUDGMENT :

Heard Advocate for the petitioner and also advocate for the Respondent No.2. Perused record.

2. The Petitioner challenges the impugned judgment and order dated 24th January, 1995 passed by the Industrial Court, Mumbai in Complaint (ULP) No. 1269 of 1988. Amongst other grounds of challenge the Petitioner has sought to challenge the impugned judgment mainly on the ground of the absence of jurisdiction to the Industrial Court to entertain the Complaint as on the face of the Complaint itself the pleadings therein disclose absence of employer employee relationship between the Petitioner and the workman on whose behalf of the complaint was filed by the Organisation. Reliance is sought to be placed in the decision of the Division Bench of this Court in **Hindustan Coca Cola Bottling S/W Pvt. Ltd. v/s Bhartiya Kamgar Sena & Ors.,** reported in 2001 III CLR 1025.

3. The impugned judgment on the other hand is sought to be justified inter alia contending that the decision in Hindustan Coca Cola Bottling S/W Pvt. Ltd.'s case was based on the law laid down by the Apex Court in **Vividh Kamgar Sabha vs. Kalyani Steels Limited & Anr.**, reported in 2001 (1) CLR 532 and in **Cipla Limited vs. Maharashtra General Kamgar Union and Ors.,** reported in 2001 (1) CLR 754, wherein the pleadings in the Complaint specifically disclosed that the workmen employed were through Contractor and therefore there was no direct relationship of employer employee in those cases. Considering the same and drawing attention to the averments relating to the initial appointment of the workman and subsequent appointment letters having been handed over to the workmen by the Administrative Officer of the Petitioner Company, it is sought to be contended that the pleadings in the complaint disclose employer-employee relationship between the Petitioner and the concerned workmen. It is well settled by number of decisions of the Apex Court as well as of this Court that in order to enable the Labour Court or the

Industrial Court to entertain a Complaint under the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971, for short "MRTU & PULP Act", it is absolutely necessary that the Complainant should disclose existence of employer -employee relationship and in the absence of such jurisdictional fact being disclosed from the pleadings, the Labour Court or the Industrial Court cannot entertain the complaint under the MRTU & PULP Act. The issue in that regard was discussed in detail in **Indian Seamless Metal Tubes Limited vs. Sunil Iwale and Ors**., reported in 2001 III CLR 728 and observations therein were approved by the Division Bench in Hindustan Coca Cola Bottling's case and the relevant observations read thus:

> "Mr. Cama also drew our attention to an unreported decision of the learned single Judge of this Court (Khandeparkar, J.) in *Indian Seamless Metal Tubes Limited v. Sunil Iwale and Ors.* (Writ Petition No.1433 of 2000 decided on 5th July, 2001) (2001 III CLR P 728). In that case the learned Judge

has not agreed with the view taken by Kochar, J. in the present case and held that in view of the decision of the Supreme Court in *Cipla Ltd.* and *Kalyani Steels Ltd.* that only precondition to seek remedy under the MRTU & PULP Act is necessity of existence of employer-employee relationship between the parties and when its existence is not already established or is disputable, the party has to first seek relief under the Central Act, i.e. the Industrial Disputes Act or the Bombay Act, i.e. the Bombay Industrial Relations Act, and if successful therein to seek remedy under the said Act thereafter. We are in agreement with the observations of the learned single Judge but with a rider that in cases where the employer-employee relationship was recognised at some stage and thereafter it was disputed, the Industrial Court has jurisdiction to decide this issue as an incidental issue under Section 32 of the MRTU & PULP Act."

4. Perusal of the complaint filed by the respondent undoubtedly discloses in para 1(c) that the workman Mahavir Badriprasad Yadav, who was appointed by the petitioner as Watchman in the year 1968-69 and was allowed to occupy residential accommodation. However, sometime in 1977 he was evicted from the said accommodation and thereafter allowed to occupy single room accommodation in a structure newly constructed for the purpose of giving residential accommodation to Watchmen within the compound of the staff quarters of the petitioner company and he continued to occupy the same till the date of filing of the complaint. However, averments in para 1(d) disclose that on or about 2nd February, 1971 the workman was issued with an appointment letter by the petitioner from one Casablances Gannon Engineering Limited said to be a subsidiary of the petitioner. It has also been stated therein that the said letter was brought and given to the workman by the Administrative Officer of the Petitioner. Similar averments are to be found in relation to four other workmen on whose behalf the allegations regarding unfair labour practice by the

petitioner was alleged. Above averments obviously disclose that since 1971 in respect of all the workmen they were issued letter of appointment in the name of the Company either as Casablances Gannon Engineering Ltd. or Paterson Engineering Company (India) Limited. Undoubtedly, the averments discloses that they are stated to be subsidiary companies of the petitioner. However, once it is disclosed by the complainant itself that the workmen are issued with the letter of appointment in the name of particular company different from the petitioner, it was necessary for the complainant to proceed against those companies rather than the petitioner company. Whether the petitioner could have been a co-opponent or not is a totally different issue which does not require any consideration in the present case. Fact remains that the averments in the complaint ex facie disclose that there was relationship of employer-employee between the workman and some company different from the petitioner company and therefore the petitioner are justified in placing reliance on the decision in the matter of Hindustan Coca Cola and to contend that the Industrial Court could not have entertained such a

complaint and ought to have dismissed it in limine.

5. It was sought to be contended on behalf of the respondent that already the evidence was recorded and it is too late for the petitioner to raise the point about the non-maintainability of the complaint.

6. As already held by the Apex Court and this Court, once jurisdictional fact pertaining to the existence of the employer-employee relationship being not disclosed by the Complainant, the Labour Court or Industrial court cannot assume jurisdiction to entertain the complaint nor the jurisdiction can be bestowed upon the Industrial Court or the Labour Court by the consent of the parties. Issue as to jurisdiction to entertain the complaint goes to the root of the case. Once it is held that the Court entertained the complaint without jurisdiction to entertain the same, merely because the parties were allowed to lead evidence that would not debar the petitioner from raising the point which has been raised in the matter in hand. In this regard, it would be appropriate at this stage to reproduce para

20 from the *Indian Seamless Metal Tubes Limited*, which was reproduced in *Hindustan Coca Cola* in para 17. Para 20 which was reproduced, reads thus:

> "20. It was also sought to be contended that mere denial of status of the complainant as that of employee by the opponent, cannot non-suit the employees and such denial would not oust the jurisdiction to the Industrial Court to ascertain the fact situation by framing issues and asking the parties to lead evidence in that regard, and to decide the same, possibly by summary manner. In fact, similar was the contention sought to be raised in *Vividh Kamgar Sabha's* case by saying that such denials can be raised in each and every case to defeat the claim of the employee. The contention was rejected by the Apex Court. Indeed, a question of framing of issue or holding of summary inquiry does not arise at all. Once, it is clear that the Industrial Court under the said Act has no jurisdiction to

> decide the issue relating to employer-employee relationship, the occasion for framing of issue on the point which is beyond its jurisdiction cannot arise. Once it is clear that the jurisdiction of the Industrial Court depends upon the fact of existence of employer-employee relationship between the parties which is a jurisdictional fact, which should exist to enable the Industrial Court to assume jurisdiction to entertain the complaint under the said Act, in the absence of the same, any attempt on the part of the Industrial Court to adjudicate upon the issue of such relationship would amount to mistake of fact in relation to jurisdiction."

7. The Division Bench in relation to the above para had to observe thus:

> "We are in respectful agreement with the above view expressed by Khandeparkar, J.

> If, on a bare reading of the complaint, the Industrial Court or the Labour Court as the case may be, is satisfied that it has no jurisdiction to decide the complaint as there is no undisputed or indisputable employer-employee relationship, the occasion for framing an issue on that count would not arise. If the Industrial court or the Labour Court is satisfied that there is no undisputed or indisputable the employer-employee relationship, it cannot assume jurisdiction to entertain the complaint and the complaint will have to be dismissed as not maintainable."

8. The law thus being settled, it is not necessary to deal with the issue at length again. Once it is found that the complaint did not disclose the existence of employer-employee relationship between the petitioner and the workmen on whose behalf the complaint was filed, the petitioner are justified in contending that the Industrial Court had no jurisdiction to entertain the complaint and on that count itself the complaint

was liable to be dismissed and on the same ground the petition is liable to be allowed.

9. In the result, therefore, without going into the other issues, petition is hereby allowed. The impugned order is hereby quashed and set aside. The Complaint (ULP) No. 1269 of 1988 filed before the Industrial Court, is hereby dismissed. It is, however, made clear that this would not debar the respondent from taking appropriate steps, if they so desire, in accordance with the provisions of law pertaining to their grievance which was sought to be made in the complaint filed on their behalf. Rule is made absolute in the above terms with no order as to costs.

10. At this stage learned advocate for the respondents seeks stay of the order passed today, which is objected to by the petitioner. However, in the facts and circumstances of the case the prayer is allowed and the order passed today shall remain stayed for a period of eight weeks from today.

11. Issuance of certified copy expedited.

Sd/-

(R.M.S.KHANDEPARKAR, J.)